

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF WISCONSIN

CYBIL FISHER,)	
)	Case No. 13-cv-00776
Petitioner,)	
)	
v.)	
)	
UNITED STATES OF AMERICA, et al.,)	
)	
Respondents.)	

UNITED STATES' MOTION TO DISMISS
PETITION TO QUASH IRS THIRD PARTY SUMMONS

Respondent United States respectfully moves the Court, pursuant to Fed. R. Civ. P. 12(b)(1), for an order dismissing the above-titled proceeding to quash an IRS summons. The action is barred by the doctrine of sovereign immunity inasmuch as Fisher failed to timely file and send notice of her petition and, therefore, the Court lacks subject matter jurisdiction.¹ In addition, the Court lacks personal jurisdiction over the United States because the petitioner failed to serve process on the Government. A memorandum is filed with this motion.

Pursuant to Civil L. R. 56(a)(1)(A) and 56(a)(2), the United States provides notice to the Petitioner that any factual assertion in the Declaration of Special Agent Jeffrey Hencke as well as

¹ The United States is the only proper party defendant here, and both the Internal Revenue Service ("IRS") and Special Agent Jeffrey Hencke should be dismissed as defendants in this case. *See Romanow v. United States*, 1998 WL 419729, *1 (W.D. Mich. 1998) (Regarding a petition to quash an IRS administrative summons, "[n]either the . . . Internal Revenue Service nor Special Agent Vercisch is a proper party to this action, and, therefore, they shall be dismissed."); accord *Loppnow v. United States*, 2009 WL 1383099, *2 (E.D. Mo. 2009); *see also Freck v. IRS*, 37 F.3d 986, 988 n. 1 (3d Cir. 1994); *Galvez v. IRS*, 448 Fed. Appx. 880, 884 (11th Cir. 2011); *In re Pansier*, 451 Fed. Appx. 593, 594 n. 1 (7th Cir. 2011).

the exhibits attached to this motion will be accepted by the Court as being true unless the Petitioner submits a contrary affidavit, declaration, or other admissible documentary evidence contradicting the factual assertion.

Dated: September 9, 2013

Respectfully submitted,

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